ARTICLE III

ADMINISTRATIVE MECHANISMS

3-1 Planning Commission

3-1.1 Authority

There is hereby created a planning agency, pursuant to NCGS 160A-361 and 160A-362, to be known as the Elizabeth City Planning Commission and referred to herein as the Planning Commission.

3-1.2 Appointment and Terms of Planning Commission Members

- (A) There shall be a Planning Commission consisting of any size or composition considered appropriate (but not less than three members), appointed by the Elizabeth City Council, all members shall reside within Elizabeth City or the City's extraterritorial planning jurisdiction area. If a larger number of extraterritorial members is needed to comply with the proportional representation requirements of NCGS 160A-362, the City Council shall submit to the Board of County Commissioners a resolution requesting that an additional member or members, as appropriate, be appointed. Proportional representation shall be determined by calculating the proportional relationship of the extraterritorial area population to the municipal population and applying that proportional relationship to the total membership of the Planning Commission. An additional member must be appointed to the Planning Commission to achieve proportional representation only when the population of the entire extraterritorial area constitutes a full fraction of the town's population divided by the total membership of the Planning Commission. Once the City of Elizabeth City provides proportional representation, no power available to it under NCGS 160A-360 shall be ineffective in its extraterritorial area solely because county appointments have not yet been made. If the Board of County Commissioners fails to make appointments within 90 days after receiving a resolution from the City Council requesting that they be made, the City Council may make the appointments.
- (B) Planning Commission members shall be appointed for four-year staggered terms, but members may continue to serve until their successors have been appointed. Vacancies may be filled by the City Council for the unexpired terms.
- (C) Members may be appointed to no more than three successive terms.(D) Planning Commission members may be removed by the City Council at any time for failure to attend three consecutive meetings or for failure to attend thirty percent or more of the meetings within any twelve month period or for any other good cause related to performance of duties.

- (E) If a member moves outside of the City's planning jurisdiction that shall constitute a resignation from the Planning Commission, effective upon the date a replacement is appointed by the City Council.
- (F) The City Council may provide for payment of any reasonable compensation for members of the Planning Commission for reimbursement of their expenses incurred in connection with their official duties.

3-1.3 Meetings of the Planning Commission

- (A) The Planning Commission shall establish a regular meeting schedule and shall meet frequently enough so that it can take action in conformity with the review procedures delineated in this Ordinance.
- (B) Since the Planning Commission has only advisory authority, it need not conduct its meetings strictly in accordance with the quasi-judicial procedures established for the Board of Adjustment. However, it shall conduct its meetings so as to obtain necessary information and to promote the full and free exchange of ideas.
- (C) Minutes shall be kept of all Planning Commission proceedings.
- (D) All Planning Commission meetings shall be open to the public, and whenever feasible the agenda for each board meeting shall be made available in advance of the meeting.

3-1.4 Quorum and Voting

- (A) A quorum for the Planning Commission shall consist of a majority of the board membership (excluding vacant seats). A quorum is necessary for the board to take official action.
- (B) All actions of the Planning Commission shall be taken by majority vote, a quorum being present.
- (C) A roll call vote shall be taken upon the request of any member.
- (D) A member may be excused from voting on a particular issue by majority vote of the remaining members present under the following circumstances:
 - 1) If the member has a direct financial interest in the outcome of the matter at issue; or
 - 2) If the matter at issue involves the member's own official conduct; or

- 3) If participation in the matter might violate the letter or spirit of a member's code of professional responsibility; or
- 4) If a member has such close personal ties to the applicant that the member cannot reasonably be expected to exercise sound judgment in the public interest.

3-1.5 Planning Commission Officers

- (A) At its first regular meeting in June of each year, the Planning Commission shall, by majority vote of its membership (excluding vacant seats) elect one of its members to serve as chairman and preside over the board's meetings and one member to serve as vice-chairman. The persons so designated shall serve in these capacities for terms of one year. Vacancies in these offices may be filled for the unexpired terms only by majority vote of the board membership (excluding vacant seats).
- (B) The chairman and vice-chairman may take part in all deliberations. The chairman may only vote when the Planning Commission has a tie vote. The vice-chairman may vote on all issues.
- (C) The Planning Director or his designee shall serve as secretary to the Planning Commission.

3-1.6 Powers and Duties of Planning Commission

- (A) The Planning Commission may:
 - 1) Make studies and recommend to the City Council plans, goals and objectives relating to the growth, development and redevelopment of the City planning jurisdiction.
 - 2) Develop and recommend to the City Council policies, ordinances, administrative procedures and other means for carrying out plans in a coordinated and efficient manner.
 - 3) Make recommendations to the City Council concerning proposed conditional use permits, proposed special use permits, and proposed zoning text and map changes, as provided by Sections 4-7.3, 4-7.4, and 8-3.
 - 4) Make recommendations to the City Council concerning preliminary subdivision plats in accordance with Section 10-3.3 (D).
 - 5) Perform any other duties assigned by the City Council.
- (B) The Planning Commission may adopt rules and regulations governing its procedures

and operations not inconsistent with the provisions of this Ordinance.

3-1.7 Advisory Committees

- (A) From time to time, the City Council may appoint one or more individuals to assist the Planning Commission to carry out its planning responsibilities with respect to a particular subject area.
- (B) Members of such advisory committees shall sit as nonvoting members of the Planning Commission when such issues are being considered and lend their talents, energies, and expertise to the Planning Commission. However, all formal recommendations to the City Council shall be made by the Planning Commission.
- (C) Nothing in this section shall prevent the City Council from establishing independent advisory groups, committees, or boards to make recommendations on any issue directly to the City Council.

3-2 BOARD OF ADJUSTMENT

3-2.1 Authority

There is hereby created a Board of Adjustment pursuant to NCGS 160A-388, to be known as the Elizabeth City Board of Adjustment and referred to herein as the Board of Adjustment.

3-2.2 Appointment and Terms of Board of Adjustment

- (A) There shall be a Board of Adjustment consisting of seven regular members and three alternates. Two regular members and two alternate members shall be appointed by the Pasquotank County Board of County Commissioners. Five regular members and one alternate member shall be appointed by the City Council. The two regular members and two alternate members appointed by the Board of County Commissioners shall reside within the Elizabeth City extraterritorial planning and zoning jurisdiction area. The five regular members and one alternate member appointed by the City Council shall be residents of the corporate limits of the City of Elizabeth City.
- (B) The Board of Adjustment regular members and alternates shall be appointed for three-year staggered terms, but both regular members and alternates may continue to serve until their successors have been appointed. Vacancies may be filled for the unexpired terms.
- (C) Regular Board of Adjustment members may be removed by the City Council at any time for failure to attend three consecutive meetings or for failure to attend fifty percent or more of the meetings within any twelve month period or for any other

- good cause related to performance of duties. Alternate members may be removed for repeated failure to attend or participate in meetings when requested to do so in accordance with regularly established procedures.
- (D) If a member moves outside of the jurisdiction from which he has been appointed, that shall constitute a resignation from the Board of Adjustment, effective upon the date a replacement is appointed.
- (E) An alternate member may sit in lieu of a regular member. When so seated, alternates shall have the same powers and duties as regular members.
- (F) Members shall serve without any pay, but may be reimbursed for any expenses incurred while representing the Board of Adjustment.

3-2.3 Meetings of the Board of Adjustment

- (A) The Board of Adjustment shall establish a regular meeting schedule and shall meet frequently enough so that it can take action in conformity with procedures delineated in this Ordinance.
- (B) The Board of Adjustment shall conduct its meetings in accordance with the quasijudicial procedures set forth in this Ordinance and in accordance with its bylaws.
- (C) All meetings of the Board of Adjustment shall be open to the public, and whenever feasible the agenda for each Board of Adjustment meeting shall be made available in advance of the meeting.

3-2.4 **Quorum**

- (A) A quorum for the Board of Adjustment shall consist of the number of members equal to four-fifths of the regular Board of Adjustment membership (excluding vacant seats). A quorum is necessary for the Board to take official action.
- (B) A member who has withdrawn from the meeting without being excused as provided in Section 3-2.5 shall be counted as present for purposes of determining whether a quorum is present.

3-2.5 Voting

(A) The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter, to determine an appeal made in the nature of certiorari, to reverse any order, requirement, decision, or determination of the Zoning Administrator, or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance (including the issuance of a special use permit). All other

actions of the Board of Adjustment shall be taken by majority vote, a quorum being present. For the purposes of this subsection, vacant positions on the Board of Adjustment and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the Board of Adjustment for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

- (B) Once a member is physically present at a Board meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has been excused in accordance with subsection (C) or has been allowed to withdraw from the meeting in accordance with subsection (D).
- (C) A member of any board exercising quasi-judicial functions pursuant to this Article shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to:
 - 1) A member having a fixed opinion prior to hearing the matter that is not susceptible to change; or
 - 2) A member having undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person; or
 - 3) If the member has a financial interest in the outcome of the matter; or
 - 4) If the matter involves the member's own official conduct; or
 - 5) If participation in the matter might violate the letter or spirit of a member's code of professional responsibility

If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

- (D) A member may be allowed to withdraw from the entire remainder of a meeting by majority vote of the remaining members present for any good and sufficient reason other than the member's desire to avoid voting on matters to be considered at that meeting.
- (E) A motion to allow a member to be excused from voting or excused from the remainder of the meeting is in order only if made by or at the initiative of the member directly affected.
- (F) A roll call vote shall be taken for each motion.

3-2.6 Board of Adjustment Officers

- (A) At its first regular meeting in March, the Board of Adjustment shall, by majority vote of its membership (excluding vacant seats) elect one of its members to serve as chairman and preside over the Board's meetings and one member to serve as vice-chairman. The persons so designated shall serve in these capacities for terms of one year. Officer vacancies may be filled for the unexpired terms only by a majority vote of the Board membership (excluding vacant seats).
- (B) The chairman of the Board of Adjustment or any member acting as chairman and the Secretary to the Board of Adjustment is authorized to administer oaths to witnesses in any matter coming before the Board of Adjustment.
- (C) The chairman and vice-chairman of the Board of Adjustment may take part in all deliberations and may vote on all issues.
- (D) A Secretary shall be appointed by the Chairman, either from within or outside of the Board membership, to hold office during the term of the Chairman.

3-2.7 Powers and Duties of Board of Adjustment

- (A) The Board of Adjustment shall hear and decide:
 - 1) Appeals from any order, decision, requirement, or interpretation made by the Zoning Administrator, or administrative official charged with enforcement of the Ordinance, as provided in Section 7-1. As used in this section and Article VII, the term "decision" shall include any final and binding order, requirement, or determination.
 - 2) Applications for special use permits, as provided in Section 4-7.1.
 - 3) Applications for general variances, as provided in Section 7-2 and applications for variances from watershed district overlay requirements as provided in Section 7-2.3.
 - 4) Questions involving interpretations of the zoning map, including disputed district boundary lines and lot lines, as provided in Section 2-3.2.
 - 5) All matters upon which it is required to pass under any City statute or ordinance that regulates land use or development.
- (B) The Board of Adjustment shall follow quasi-judicial procedures when deciding appeals and requests for variances and special use permits
- (C) The Board may adopt rules and regulations governing its procedures and

[Section 3-2 amended January 27, 2014, Text Amendment Case 02-13]

3-3 ZONING ADMINISTRATOR

3-3.1 Establishment

Except as otherwise specifically provided, primary responsibility for administering and enforcing this Ordinance may be assigned to one or more individuals by the City manager. The person or persons to whom these functions are assigned shall be referred to in this Ordinance as the 'Zoning Administrator.' The terms 'staff' and 'administrator' are sometimes used interchangeably with the term 'Zoning Administrator.'

3-3.2 Duties of the Zoning Administrator

The Zoning Administrator shall:

- (A) Establish and publish application procedures for permits, appeals, and actions pursuant to this Ordinance and forms implementing the same;
- (B) Issue permits and certificates pursuant to this Ordinance;
- (C) Review all development plans and permits to assure that the permit requirements of this Ordinance have been satisfied;
- (D) Interpret the applicability of the provisions of this Ordinance in matters where the text does not clearly provide guidance;
- (E) Maintain all records pertaining to the provisions of this Ordinance in his office(s) and make said records open for public inspection;
- (F) Periodically inspect properties and activities for which permits have been issued to determine whether the use(s) is being conducted in accordance with the provisions of this Ordinance;
- (G) Cause to be investigated violations of this Ordinance;
- (H) Enforce the provisions of this Ordinance;
- (I) Issue notice of corrective action(s) when required;
- (J) Use the remedies provided in this Ordinance to gain compliance;
- (K) Be authorized to gather evidence in support of said activities;

- (L) Receive appeals and forward cases to the appropriate Board;
- (M) Perform the specific flood damage prevention duties delineated in Section 12-2.7; and
- (N) Perform other duties as may be assigned by the City Council.

3-4 PLANNING DIRECTOR

3-4.1 Establishment and Duties

The Planning Director is the administrative head of the planning department. As provided in Article X, the Planning Director is authorized to approve minor subdivision final plats, major subdivision final plats, and to perform other duties as authorized by this Ordinance.

3-5 CITY COUNCIL

3-5.1 Duties of the City Council

- (A) The City Council, in considering conditional use permit applications, acts in a quasijudicial capacity and, accordingly, is required to observe the procedural requirements set forth in Section 4-7 of this Ordinance. In considering amendments to this Ordinance or the zoning map, the City Council shall follow the regular, voting, and other requirements as set forth in other provisions of general law.
- (B) In considering proposed changes in the text of this Ordinance or in the zoning map, the City Council acts in its legislative capacity and must proceed in accordance with the requirements of Article VIII.
- (C) The City Council, in considering the approval of a site specific development plan (as defined in Section 4-15, Vested Rights), shall follow the procedural requirements set forth in Section 4-7 of this Ordinance for the issuance of a conditional use permit.
- (D) As provided in Section 10-3.3, the City Council shall review and approve preliminary subdivision plats.

3-6 TECHNICAL REVIEW COMMITTEE

3-6.1 Establishment

There is hereby created a technical advisory committee known as the Technical Review Committee (TRC) consisting of, but not limited to, the Planning Director, Zoning Administrator, Director of Public Works, Director of Parks and Recreation, Chief Building

Inspector, Superintendent of Electrical Utilities, City Manager, Police Chief, and Fire Chief or their authorized representatives.

3-6.2 Duties of the Technical Review Committee

The TRC shall have the following duties:

- (A) To review and comment on the technical aspects of all applications for approval of subdivision plats, major site plans, and master development plans.
- (B) To provide the Planning Director, for transmission to the Planning Commission, City Council, or Board of Adjustment and other appropriate boards and agencies, with reports and recommendations regarding requests for approval before such bodies.
- (C) To perform any other related duties that this Ordinance may authorize or that the City Council may direct.

3-6.3 Officers

The Planning Director shall serve as Chairman and shall have the authority to invite representatives of additional agencies or municipal departments for assistance. The Planner/CD Officer shall serve as Chairman in the absence of the Planning Director. A Secretary shall be appointed by the Chairman, either from within or outside of the TRC membership.

3-6.4 Meetings

- (A) The TRC shall establish a regular meeting schedule and shall meet frequently enough so that it can take action in conforming with the review procedures delineated in this Ordinance.
- (B) The TRC may adopt rules and regulations governing its procedures and operations not inconsistent with the provisions of this Ordinance.

3-7 HISTORIC PRESERVATION COMMISSION

3-7.1 Authority

There is hereby established the Elizabeth City Historic Preservation Commission, hereafter referred to as the Preservation Commission or Commission. The Commission shall be the successor in all business affairs of the former Elizabeth City Historic Districts Commission, Downtown Historic Preservation Commission, and the West Main Street Historic Preservation Commission.

3-7.2 Appointment and Terms of the Historic Preservation Commission

- (A) The Commission shall consist of seven members appointed by the City Council.
- (B) The Commission members shall serve staggered terms of three years for each term. The normal tenure shall be two consecutive terms. However, if the City Council finds that unusual or exceptional circumstances exist, additional terms may be authorized.
- (C) A majority of the Commission members shall meet the following criteria: (i) be an owner, have a lease hold interest or reside in the Historic Districts so designated at the time of appointment and (ii) have a demonstrated special interest, experience or education in history, architecture, archaeology, or related fields. Appointment shall be made to reflect the mix of downtown and residential interests. If a member so designated under (i) loses his/her designated status, the member's term shall be automatically terminated.

3-7.3 Meetings of the Historic Preservation Commission

- (A) The Historic Preservation Commission shall establish a meeting time, and shall meet at least quarterly and more often as it shall determine and require. All meetings of the Commission shall be open to the public, and reasonable notice of the time and place thereof shall be given to the public. All meetings shall conform to the North Carolina Open Meetings Law (NCGS 143-33B).
- (B) The Commission shall conduct its meetings in accordance with the quasi-judicial procedures set forth in this Ordinance and in accordance with its bylaws.
- (C) Any member of the Commission who misses more than three consecutive regular meetings or more than one-half of the regular meetings in a calendar year shall lose his/her status as a member of the Commission and shall be replaced or reappointed by the City Council. Absence due to sickness, death or other emergencies of like nature shall be recognized as approved absences and shall not affect the member's status on the Commission except, that, in the event of a long illness or other such cause for prolonged absence, the member shall be replaced.
- (D) A member may be excused from voting on a particular issue by majority vote of the remaining members present under the following circumstances:
 - 1) If the member has a direct financial interest in the outcome of the matter at issue; or
 - 2) If the matter at issue involves the member's own official conduct; or
 - 3) If participation in the matter might violate the letter or spirit of a member's

code of professional responsibility; or

- 4) If a member has such close personal ties to the applicant that the member cannot reasonably be expected to exercise sound judgment in the public interest.
- (E) The Commission shall keep permanent minutes of all of its meetings. The minutes shall record attendance of its members, resolutions, findings, recommendations, and actions. The minutes of the Commission shall be a public record.
- (F) An annual report shall be prepared and submitted to the City Council by October of each year. Such report shall include a comprehensive and detailed review of the activities, problems, and actions of the Commission, as well as any budget request and/or recommendations.

3-7.4 Powers and Duties of the Historic Preservation Commission

- (A) The Historic Preservation Commission shall seek to promote, enhance and preserve the character of the Districts, provided the Commission shall not require the reconstruction of individual or original buildings or structures or portions thereof. The Commission is authorized and empowered to undertake such actions reasonably necessary to the discharge and conduct of its duties and responsibilities as outlined in this Ordinance and Part 3A, Article 19 of Chapter 160A of the General Statutes of the State of North Carolina, including but not limited to the following:
 - (1) Recommend to the Planning Commission districts or areas to be designated by ordinance as 'Historic Districts'.
 - (2) Recommend to the Planning Commission that designation of any district or area as an 'Historic District' be revoked or removed for cause.
 - (3) Consider and grant or deny applications for Certificates of Appropriateness in accordance with Section 12-8 of this Ordinance.
 - (4) Give advice to property owners concerning the treatment of the historical and visual character of their properties located within the Districts, such as color schemes, gardens and landscape features, and minor decorative elements.
 - (5) Propose to the City Council changes to this or any related ordinance and propose new ordinances or laws relating to the Historic Districts or relating to the total program for the development of historical resources of Elizabeth City and its environs.
 - (6) Cooperate with other City of Elizabeth City boards or commissions or with agencies of the City of Elizabeth City or other governmental entities and

- offer or request assistance, aid guidance, or advice concerning matters under its purview or of mutual interest.
- (7) Publish information about, or otherwise inform the owners of property with in the Districts, of any matters pertinent to its duties, organization, procedures, responsibilities, functions or requirements.
- (8) Determine programs of information, research, or analysis relating to any matters under its purview.
- (9) Report violations of this Ordinance, or related ordinances, to the local official responsible for enforcement.
- (10) Assist the City staff in obtaining the services of private consultants to aid in carrying out programs for research or analysis.
- (11) Accept funds granted to the Commission for private or non-profit organizations.
- (12) Contract, with the approval of the City Council, for services or funds from the State of North Carolina and agencies or departments of the United States government.
- (13) Recommend to the City Council and the State of North Carolina structures, sites, objects or districts worthy of national, state, or local historic recognition.
- (14) Initiate and participate in negotiations with owners and other parties in an effort to find means of preserving buildings scheduled for demolition.
- (15) Establish guidelines under which the City Manager or his designee may approve minor modifications on behalf of the Commission. No application shall be denied without first being considered by the Commission.
- (16) Conduct public hearings on applications for Certificates of Appropriateness where the Commission deems that such a hearing is necessary.
- (17) Organize itself and conduct its business by whatever legal means it deems proper.
- (18) Exercise such other powers and perform such other duties as are required elsewhere by this Ordinance, the General Statutes of North Carolina, or by the City Council.
- (B) The Commission may request the NC Department of Cultural Resources or the NC

- Historic District Commission to review, comment on, and make recommendations upon all applications for a Certificate of Appropriateness.
- (C) The Commission may adopt rules and regulations governing its procedures and operations not inconsistent with the provisions of this Ordinance and NCGS 160A-400.1 through 160A-400.14.

3-7.5 Designation of Historic Districts

- (A) It is the intent of this section to make provisions within this Ordinance (1) to safeguard the heritage of the City of Elizabeth City by preserving any area which reflects elements of its cultural, social, economic, political, or architectural history;
 (2) to stabilize and improve property values in such areas;
 (3) to foster civic beauty;
 (4) to strengthen the local economy; and
 (5) to promote the use and preservation of such areas for the education, welfare, and pleasure of residents of Elizabeth City and the State as a whole.
- (B) The City Council may designate from time to time one or more Historic Districts within the jurisdictional boundaries of the City. No Historic District(s) shall be designated until:
 - (1) An investigation and report describing the significance of the buildings, structures, features, sites or surroundings included in any such proposed district and a description of boundaries of such district has been prepared, and
 - (2) The Department of Cultural Resources, acting through an agent or employees designated by its Secretary, shall have made an analysis of and recommendations concerning such report and description of proposed boundaries. Failure of the Department to submit its written analysis and recommendations to the City Council within thirty calendar days after a written request for such analysis has been mailed to it shall relieve the City of any responsibility for awaiting such analysis, and the City Council may at any time thereafter take any necessary action to adopt or amend this Ordinance.
- (C) The City Council may also, in its discretion, refer the report and proposed boundaries to Historic Preservation Commission or other interested body for its recommendations prior to taking action to amend this Ordinance. With respect to any changes in the boundaries of such district subsequent to its initial establishment, or the creation of additional districts within the jurisdiction, the investigative studies and reports required by (B) (1) shall be prepared by the Historic Preservation Commission, and shall be referred to the Planning Commission for its review and comments according to procedures set forth in this Ordinance. Changes in the boundaries of an initial district or proposal for

- additional districts shall also be submitted to the Department of Cultural Resources in accordance with the provisions of (B) (2).
- (D) On receipt of these reports and recommendation, the City may proceed in the same manner as would otherwise be required for the adoption or amendment of this Ordinance.